



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Execute an Amended and Restated Northern California Power Agency Joint Powers Agreement (EUD)

MEETING DATE: November 7, 2007

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute an amended and restated Northern California Power Agency Joint Powers Agreement (JPA).

BACKGROUND INFORMATION: The City of Lodi has been a full signatory party to the NCPA JPA since its formation in 1968. The JPA has undergone several minor amendments since then, primarily for the purpose of admitting new members to the JPA, but the principal agreement has remained intact.

During the spring of 2006, the NCPA Commission established an ad hoc Governance Committee (GC) to address matters related to member entry to and exit from NCPA programmatic effort areas and to identify corresponding member funding policies and budget allocation procedures. As part of that process the GC reviewed the existing NCPA JPA and made several recommendations to revise and update the JPA.

NCPA has multiple categories of members participating in NCPA projects who receive various combinations of services. Some members are large, some small; some participate in NCPA projects, others do not; some are in the power pool, some are not; not all members operate in the same electric transmission control area. To accommodate these member differences and to provide NCPA and all members with the appropriate funding tools to assure that NCPA can effectively meet member needs, the GC recommended a three-tier approach to revising the JPA:

- 1) Member Annual Assessment The current JPA provides for annual assessments to NCPA members of up to '10 cents per peak kW' of retail electric load. The total NCPA assessment and collection of this amount would total about \$180,000 per year, a relatively small portion of the overall NCPA budget and insufficient to cover even a modest portion of current NCPA general overhead and management costs. This fee structure has not changed since 1968.

The GC recommended that this charge be adjusted to assess up to '15 cents per MWh,' collecting a total of approximately \$1.5 million per year. This revenue source will be used, given NCPA Commission approval and discretion, to provide for and offset a portion of programmatic costs in NCPA's Legislative Services, Regulatory Services and Member Services budget areas. As a result, although the JPA assessment will increase for all members, the net total NCPA programmatic assessment for each member is projected to be relatively unchanged.

APPROVED: 
Blair King, City Manager

- 2) Program Entry / Exit: The existing JPA provides that members may withdraw from the JPA on 30-day minimum notice. The GC recommended that this period be revised to provide a minimum of two years notice to withdraw from the JPA. This provides added funding certainty to the organization. New members to NCPA programmatic areas will also be required to participate for a minimum of two years.
- 3) General JPA Changes: The entire JPA has been reviewed by General Counsel and members of the NCPA Legal Committee to edit/add/remove various sections and/or language within the JPA which are either out of date or no longer applicable. The changes have been reviewed and approved by EUD and Lodi's City Attorney.

These changes are expected to improve NCPAs operations and provide Lodi with greater durability of NCPA service levels. The NCPA Commission unanimously approved the amended agreement on September 28, 2007 and recommended that member-governing bodies approve the amended agreement.

Staff recommends that the City Council approve execution of the Amended and Restated NCPA JPA. The agreement is expected to be approved by each NCPA member governing bodies by the end of the year, and will become effective when all parties have executed the agreement.

FISCAL IMPACT: The proposed change in NCPAs annual assessment will have a minimal impact on NCPAs charges to Lodi. The City of Lodi's total NCPA service assessment is approximately \$43.5 million for FY 07-08 AND would be expected to decrease by approximately \$18,223 if the JPA revisions were implemented this year. The changes are scheduled to be implemented commencing with NCPAs FY 2008-2009 budget process.

FUNDING: Not applicable


George F. Morrow
Electric Utility Director

GFM/ist
Attachments

AMENDED AND RESTATED
NORTHERN CALIFORNIA POWER AGENCY
JOINT POWERS AGREEMENT

This Amended and Restated Northern California Power Agency Joint Powers Agreement (“this Agreement”) is dated as of January 1, 2008, and is by and between the members of the Northern California Power Agency (“NCPA”); and

W I T N E S S E T H:

WHEREAS, the Northern California Power Agency was created by that certain Northern California Power Agency Joint Powers Agreement, first made July 19, 1968 and revised as of April 1, 1973 (the prior JPA); and

WHEREAS, the prior JPA was amended as of December 7, 1977; April 13, 1978; and January 1, 1982; and

WHEREAS, the prior JPA was supplemented by the addition of further signatories in addition to those of the parties who were originally signatory to it on September 27, 1984; September 27, 1989; April 1, 1995; and November 1, 2005; and

WHEREAS, each of the parties hereto is a signatory to the prior JPA and a “Member” of NCPA; and

WHEREAS, the parties now desire to further amend, and to restate, the prior JPA; and

WHEREAS, each of the parties to this Agreement is a “public agency” as that term is defined in Section 6500 of the Government Code of the State of California; and

WHEREAS, each of the parties hereto has the power to purchase, generate, transmit, distribute, sell and interchange electric energy in addition to other powers which are common to each of them; and

WHEREAS, pursuant to Title 1, Division 7, Chapter 5, of the Government Code of the State of California (commencing at Government Code section 6500), commonly known as the Joint Exercise of Powers Act, two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, it is the desire of the parties to use any power common to them that will make more efficient the use of the powers of the individual parties in the purchase, generation, transmission, distribution, sale, interchange and pooling of electrical energy

and capacity among themselves, or with each other, or with others, and any other power reasonably necessary and appropriate to aid in the accomplishment of any of these purposes; and

WHEREAS, the parties find that it would be to their mutual advantage and the public benefit to coordinate their area system planning and operation, within the extent permitted by the laws and regulations governing their respective operations and to the extent each party finds it desirable to do so, and further find that such coordination shall be understood to include the following:

- (a) Coordination of studies relating to the addition of generation or transmission facilities;
- (b) Coordination of transmission services over various facilities, including those of the United States, and of the charges for such transmission service, and the policies governing such transmission;
- (c) Coordination and maintenance of reserve generating and transmitting capacity;
- (d) Coordination in the sale of surplus capacity and energy; and

WHEREAS, the parties desire, by means of this Agreement to establish an organization and procedure for such coordination and operation and to provide for the general direction of such organization's policies, it being understood by all the parties that:

- (a) This Agreement is being executed initially by certain public agencies, but it is the intent of the parties that others may associate, and the parties signatory may re-associate themselves, later by signature to this Agreement and payment of a pro-rata share of organizational, planning and other expenditures as determined by a separate commission herein created;
- (b) All parties hereto desire that reasonable provision be made for withdrawal from such organization.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I

PURPOSES

1. It is the purpose of this Agreement to establish pursuant to the Joint Exercise of Powers Act an agency to be known as the NORTHERN CALIFORNIA POWER AGENCY for and with the purpose of acquiring and disposing of ownership and use of revenue producing facilities, including electric generating and transmitting

facilities, and making more efficient use of the common powers of individual parties composing NCPA to acquire, purchase, generate, transmit, distribute, sell, interchange, and pool electric energy and capacity, and with the further purpose to develop all other reasonably necessary or appropriate powers to provide greater individual and group efficiency through the coordination indicated in this Agreement to the extent permitted by the laws and regulations governing such operations.

ARTICLE II

ORGANIZATION – NORTHERN CALIFORNIA POWER AGENCY

1. There is hereby established pursuant to the Joint Exercise of Powers Act (section 6500 et seq. of the Government Code of the State of California) an Agency which shall be a public entity separate from the parties to this Agreement. The name of said agency shall be the NORTHERN CALIFORNIA POWER AGENCY. The governing body of NCPA shall be a Commission composed of one representative of each of the parties as to which this Agreement has not in any way been terminated. Such Commission shall be the administering agency of this Joint Powers Agreement, and, as such, shall be vested with the powers set forth, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein.

2. Each party to this Agreement shall be a “Member” of NCPA and appoint its designated representative to the Commission, and said representatives shall:

(a) Elect a chair, a vice-chair, and a secretary, and such other officers as the Commission shall find appropriate, to serve the Commission at its pleasure or for such term as may be provided by by-laws adopted by the Commission.

(b) Establish an Executive Committee, and such other committees as they shall find appropriate. The Executive Committee may exercise any power of the Commission delegated to it by by-laws adopted by the Commission.

(c) Provide general directives for the work of such committees.

(d) Take appropriate measures to meet the financial requirements of NCPA, by assessments and other contributions, as hereinafter provided for, and make other provisions as they shall find appropriate for the work of the Commission.

3. The Chair of NCPA shall preside at meetings of the Commission and perform such other duties as the Commission shall instruct. The duties of the Vice-Chair and the Secretary shall be the usual and customary duties of such officers.

4. The Commission shall appoint one of its officers or employees to either or both of the positions of Treasurer of NCPA and Controller of NCPA. Such offices may be held by separate officers or employees or combined and held by one officer or

employee. In any case, the Treasurer and Controller of NCPA shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Government Code.

5. The Treasurer of NCPA shall be the depository and have custody of all the money of NCPA from whatever source. The Controller of NCPA shall draw warrants or checks to pay demands against NCPA when the demands have been approved by the Commission or by the General Manager or the Assistant General Manager pursuant to a delegation of authority therefore adopted by the Commission. The Treasurer and Controller shall comply strictly with the provisions of the statutes relating to their duties found in Chapter 5, Division 7, Title 1 of the Government Code, beginning with Section 6500. The Controller and the Treasurer shall each file an official bond in the amount determined from time to time by the Commission.

6. The Commission shall appoint a General Manager, and may appoint one or more Assistant General Managers, to serve at the pleasure of the Commission. The General Manager shall have charge of, handle, or have access to any property of NCPA, and shall file an official bond in the amount determined from time to time by the Commission.

7. The Commission shall provide for regular meetings and special meetings in accordance with the Ralph M. Brown Act, Chapter 9, Part 1, Division 2, Title 5, of the Government Code beginning with section 54950, or in accordance with such other regulations as the legislature may hereafter provide. Each party to this Agreement shall authorize and designate one representative to vote for it at all meetings of the Commission. In addition, each party to this Agreement shall designate one or more alternates, who shall have the power to vote in the place and stead of the designated representative, in his or her absence. Public agencies which are "Associate Members" pursuant to Article IV Paragraph 7 shall not be entitled to voting representation on the Commission, but may designate one non-voting representative and one or more non-voting alternates. Associate members shall be entitled to receive notices of and to attend all regular and special meetings of the Commission in the same manner as Members.

8. (a) Each party to this Agreement, so long as this Agreement has not in any way been terminated as to such party, shall have one vote. The affirmative or negative vote of a majority of those members of the entire Commission entitled to vote shall be necessary for it to take action, except that none of the terms and conditions set forth in this Agreement, nor any of the procedures expressly provided for herein, may be altered, changed, or amended by such a vote, or by any means, except by written amendments to this Agreement executed by all parties hereto.

(b) Notwithstanding the provisions of Article II Paragraph 8(a) to the contrary, where agreements for NCPA projects or programs between and among NCPA and its members provide for quorum or voting procedures, such agreed upon procedures shall be utilized, including provisions for voting by project or program participation

percentages or voting by either associate members or non member project or program participants.

ARTICLE III

POWERS AND FUNCTIONS

1. NCPA has any and all powers authorized by law to all of the parties hereto, and separately to the agency herein created, relating to the acquisition, construction, financing, disposition, use, operation and maintenance of works for the generation and transmission of electric power and energy for use within and without the boundaries of such parties, and relating to the provision of power and energy to such area by contract with owners of such facilities, whether federal or state agencies or public utilities, including agreements to purchase power generated by others or to exchange power with others and agreements for transmission of power over its facilities and over the facilities of others and standby and pooling agreements. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. All powers common to the parties are specified as powers of NCPA. NCPA is hereby authorized to do all acts necessary for the exercise of such powers, including, but not limited to, any or all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, provide for maintenance and operation of, or maintain and operate, any buildings, work or improvements; to acquire, hold or dispose of property wherever located; to incur debts, liabilities or obligations; to receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity; and to sue and be sued in its own name; and generally to do any and all things necessary or convenient to provide adequate supplies of firm and reliable power to its members.

Without limiting the foregoing generality, NCPA may:

- (i) acquire and dispose of all kinds of property and utilize the power of eminent domain, except that the power of eminent domain may not be exercised within the political boundaries or corporate limits of any party serving retail electric power load, nor may eminent domain be exercised with respect to any property interest owned by a party hereto, without the consent of said party, which consent shall not be unreasonably withheld;
- (ii) issue or cause to be issued bonded and other indebtedness, and pledge any property or revenues as security to the extent permitted by law either under Article 2, Chapter 5, Division 7, Title 1 of the Government Code or otherwise including, but not limited to, bonds or other evidences of indebtedness of a non-profit corporation issued on behalf of NCPA or any of the parties to this Agreement;

- (iii) obtain in its own name all necessary permits and licenses, opinions and rulings;
- (iv) whenever necessary to facilitate the exercise of its powers, form and administer nonprofit corporations to do any part of what NCPA could do, or to perform any proper corporate function, and enter into agreements with such a corporation;
- (v) receive assignments of power supply contracts with the Western Area Power Administration of the United States or others from the parties, or act as trustee or agent under them; real-locate power to the parties under those contracts, sell power generated or otherwise acquired by it to the parties and, to the extent permitted by law, to associate members and to others; provided that under no circumstances will an assigning party pay more for power, or receive an inferior supply, than if it had not assigned.

2. The manner in which NCPA shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a general law city which is a member hereof could exercise such powers and perform such duties; and shall not be subject to any restriction applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

3. None of the debts, liabilities or obligations of NCPA shall be the debts, liabilities or obligations of any of the parties to this Agreement unless assumed in a particular case by resolution of the governing body of the party to be charged.

ARTICLE IV

MEMBERSHIP

1. Any preference purchaser or potential preference purchaser of electric service from the Western Area Power Administration of the United States, which is a "public agency," as such term is defined in Section 6500 of the Government Code of the State of California, may be a party to this Agreement.

2. (a) Any public agency which qualifies under Article IV Paragraph 1 may become a party to this Agreement by signing this Agreement and paying NCPA a pro-rata share of organization, planning and other costs and charges as determined by the Commission to be appropriate, and upon approval of all then existing parties to this Agreement. This Agreement will then become effective as of that date as to that signatory. This Agreement shall remain in effect as to any party, unless and until it is terminated as to such party by notice in writing to all other parties given by the withdrawing party at least two (2) years in advance of the effective date of such termination.

(b) Any party so terminating shall be obligated to pay its pro-rata share of all debts, liabilities and obligations of NCPA as of the date of termination as a condition precedent to such termination and withdrawal; provided, however, that this obligation shall not extend to debts, liabilities and obligations of NCPA or a nonprofit corporation created by NCPA and secured or otherwise committed pursuant to project or program agreements, with parties to this Agreement, but the debts, liabilities and obligations of the parties to such project or program agreements shall be determined by their terms.

3. (a) Each party hereto agrees that it will annually contribute, in proportion to its respective total retail electric power load (or where no retail load exists, the consumptive power load, or where no consumptive power load exists, other suitable measure as approved by the Commission) for the previous calendar year, to a fund or budget of NCPA which may cover up to one-third of legislative and regulatory activities or other NCPA general expenses not covered by other agreements or revenue sources, as may be approved by the Commission; and that such annual cash contribution to said fund or budget by any party may be up to fifteen cents (\$0.15) per megawatt hour (MWh) of said total retail electric power load or consumptive power load, or where no consumptive power load exists, other suitable measure as approved by the Commission, as submitted by such party to the Federal Energy Regulatory Commission or other governmental regulatory authority.

(b) In the event that NCPA contracts for or participates in the acquisition, purchase, lease or construction of generation or transmission facilities, or both, it is the intention of the parties hereto that all parties, agencies and others, both public and private, that utilize such facilities shall bear the total annual costs thereon on an annual fiscal year basis by entering into appropriate power supply contracts with NCPA ("Power Contracts"). Costs related to a particular planning activity or to a particular project which are incurred prior to the procurement of long-term financing ("preliminary costs"), may be borne by fewer than all the parties in any manner satisfactory to such parties, notwithstanding the provisions of Article IV Paragraph 3(a) or the provisions of any Power Contracts. Alternatively, all or part of any such preliminary costs may be advanced by fewer than all of the parties, upon agreement of NCPA and the party or parties advancing the costs, such advances to be repaid out of the proceeds of any subsequent long-term financing. Otherwise, such preliminary costs shall be charged to the operating costs of the NCPA.

(c) Parties participating in programs or services provided by NCPA shall provide at least a two (2) year written notice to NCPA of withdrawal from a given program or service. Parties newly participating in programs or services may be required to make an initial program or service participation commitment of longer than two (2) years, subject to Commission approval. Parties participating in programs or services pursuant to an agreement or other formal written arrangement approved by the Commission are subject to the therein described participation and withdrawal terms and conditions.

4. Upon the request or approval of NCPA, any party hereto may make payments, advances or contributions to NCPA from its treasury for any and all purposes set forth herein, and upon request or approval of NCPA, may contribute personnel, equipment or property, in lieu of other contributions or advances, to assist in the accomplishment of one or more of such purposes. Except as otherwise provided in accordance with Article IV Paragraph 3(b), NCPA approved advances will be treated as indebtedness of NCPA and shall be payable and repaid as such. Contributions made pursuant to Article IV Paragraph 3(a) are not advances. All such payments, advances or contributions, whether in cash or in kind, shall be made to and may be disbursed or used by NCPA.

5. Except as otherwise provided in this Agreement, there shall be no repayment or return to any party of all or any part of any payments, advances, or contributions in cash or in kind.

6. NCPA shall be held to a strict accountability of all funds and shall make an annual audit report to all parties of all receipts and disbursements, all in accordance with section 6505 of the Government Code and other applicable statutes, and with sound accounting practices.

7. If any preference purchaser or potential preference purchaser of electric service from the Western Area Power Administration of the United States is not eligible for membership herein under the terms of Article IV Paragraph 1, such purchaser may be admitted as an associate member, by separate agreement with NCPA, upon approval of the Commission. Associate members shall not be considered to be a party to this Agreement within the meaning of the Joint Exercise of Powers provisions of the Government Code, Section 6500 et seq. Associate members shall pay such portions of the costs of NCPA's operations as may be established in the membership agreement between NCPA and the associate member, including payment of charges established by Article IV Paragraph 3(a).

ARTICLE V

GENERAL PROVISIONS

1. Upon dissolution of NCPA as a legal entity, all debts of and advances to NCPA shall be paid, and then the property of NCPA, whether real or personal, shall be divided among and distributed to all of the parties who at any time during the existence of NCPA were parties to this Agreement in proportion to the costs borne by each such party to NCPA during its legal existence by non-reimbursed contributions made pursuant to Article IV Paragraph 3(a), or by payments under Power Contracts or non-reimbursed payments for preliminary costs made pursuant to Article IV Paragraph 3(b).

2. The governing Commission of NCPA is authorized to procure public liability and other insurance as it deems advisable to protect NCPA and each of the parties hereto, charging the cost thereof to the operating costs of NCPA.

3. All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them in the same degree and extent while engaged in the performance of any of their functions or duties extraterritorially under the provisions of Article 1 of Chapter 5, Division 7 of Title 1 of the Government Code of the State of California and as provided by law.

4. In the event that any party to this Agreement should at any time claim that another party has in any way breached or is breaching this Agreement, the complaining party shall file with the governing body of the other party, and with the above mentioned NORTHERN CALIFORNIA POWER AGENCY Commission, a written claim of said breach, describing the alleged breach and otherwise giving full information respecting the same. The Commission shall thereupon, at a reasonable time and place, specified by it, give all parties full opportunity to be heard on the matter, and shall, upon conclusion of said hearing, give the legislative or governing bodies of all parties a full report of its findings and recommendations. Said report, findings and recommendations shall be deemed advisory only, shall not in any way bind any of the parties hereto, and shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendations, if any party should be dissatisfied with or disagree with the same, the legislative or governing bodies of the parties in disagreement shall jointly meet with each other at a reasonable time and place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement, and no action for any legal relief because of any such breach or alleged breach of this Agreement, shall be filed or commenced, and nothing shall be done by any party to rescind or terminate this Agreement, except as provided in Article IV hereof, unless and until such party has first given to the other parties a reasonable time, after the conclusion of said joint meeting of the legislative or governing bodies that have met to resolve their differences, within which to cure any breach or alleged breach.

5. It is hereby declared to be the intention of the parties that the paragraphs, sentences, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or article of this Agreement shall be declared unconstitutional or invalid for any reason by the valid judgment or decree of a Court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining paragraphs, clauses, phrases, sentences and articles of this Agreement.

6. All notices required or given pursuant to this Agreement shall be deemed properly served when deposited, postage prepaid, in the United States mail, addressed to

each party at the address indicated on this Agreement adjacent to the signature line of each party.

ARTICLE VI

EFFECTIVE DATE

1. This Agreement shall become effective on the date of its execution by all of the parties and shall be effective at that time as of the date first above written.

2. Upon the effective date of this Agreement, the prior JPA, as amended, shall be of no further force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month, and year herein first above written.

CITY OF ALAMEDA

APPROVED AS TO FORM:

By: _____

By: _____

Its: _____

Its: _____

Date: _____

BAY AREA RAPID TRANSIT DISTRICT

APPROVED AS TO FORM:

By: _____

By: _____

Its: _____

Its: _____

Date: _____

CITY OF BIGGS

APPROVED AS TO FORM:

By: _____

By: _____

Its: _____

Its: _____

Date: _____

CITY OF GRIDLEY

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF HEALDSBURG

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF LODI

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF LOMPOC

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF PALO ALTO

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

PORT OF OAKLAND

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF REDDING

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF ROSEVILLE

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF SANTA CLARA

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

TRUCKEE DONNER PUBLIC
UTILITY DISTRICT

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

TURLOCK IRRIGATION DISTRICT

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF UKIAH

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

PLUMAS-SIERRA RURAL ELECTRIC
COOPERATIVE, Associate Member

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

RESOLUTION NO. 2007-213

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE AN
AMENDED AND RESTATED NORTHERN CALIFORNIA
POWER AGENCY JOINT POWERS AGREEMENT

WHEREAS, the Northern California Power Agency ("NCPA") was formed in 1968 for the purpose of utilizing the joint action of participating public power entities to pursue common interests for the benefit of all such members; and

WHEREAS, the NCPA Joint Powers Agreement ("JPA") was initially developed on July 19, 1968, and subsequently revised on April 1, 1973: and

WHEREAS, in addition to the City of Lodi, the cities of Alameda, Biggs, Gridley, Healdsburg, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, the Bay Area Rapid Transit District, the Port of Oakland, the Truckee-Donner Public Utility District, and the Turlock Irrigation District are signatory participants to the Joint Powers Agreement and the Plumas-Sierra Rural Electric Cooperative is an associate member of NCPA and has also executed the JPA; and

WHEREAS, the JPA may be revised from time to time as approved by the NCPA Commission and individually by all governing bodies of the signatories to it; and

WHEREAS, during the Spring of 2006, the NCPA Commission established an ad hoc Governance Committee to address matters related to member entry to and exit from NCPA programmatic effort areas as well as to identify corresponding member funding policies and budget allocation procedures: and

WHEREAS, the Governance Committee completed its efforts and made several specific recommendations to revise and update the Joint Powers Agreement including: 1) revising the annual JPA member assessment from a maximum of 10 cents per peak kW to a maximum of 15 cents per MWh of retail load or if no retail load is served, other suitable measure; 2) providing for a minimum of two (2) years notice to withdraw from the JPA; and 3) revising and removing certain elements of the JPA to be more consistent and to comport with current business practices and procedures; and

WHEREAS, the attached proposed "Amended and Restated Northern California Power Agency Joint Powers Agreement (Amended JPA)" incorporates the above described Governance Committee recommendations and other updates to the Joint Powers Agreement as recommended by Agency staff and the Agency General Counsel to strengthen NCPA operations and to effectively meet member needs; and

WHEREAS, NCPA Commission on September 28, 2007, unanimously approved the Amended JPA and further recommended that the governing boards of NCPA JPA members approve the Amended JPA; and

WHEREAS, the Amended JPA strengthens NCPA operations and provides Lodi greater certainty of NCPA service levels to more effectively serve the electric utility customers of Lodi.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the Amended and Restated NCPA JPA, and authorizes the City Manager or his designee to execute the Agreement and authorizes the Electric Utility Director or his designee to administer the Agreement.

Dated: November 7, 2007

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I hereby certify that Resolution No. 2007-213 was passed and adopted by the Lodi City Council of the City of Lodi in a regular meeting held November 7, 2007, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Katzakian, Mounce,
and Mayor Johnson

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


JENNIFER M. PERRIN
Deputy City Clerk

AMENDED AND RESTATED
NORTHERN CALIFORNIA POWER AGENCY
JOINT POWERS AGREEMENT

This Amended and Restated Northern California Power Agency Joint Powers Agreement (“this Agreement”) is dated as of January 1, 2008, and is by and between the members of the Northern California Power Agency (“NCPA”); and

W I T N E S S E T H:

WHEREAS, the Northern California Power Agency was created by that certain Northern California Power Agency Joint Powers Agreement, first made July 19, 1968 and revised as of April 1, 1973 (the prior P A); and

WHEREAS, the prior JPA was amended as of December 7, 1977; April 13, 1978; and January 1, 1982; and

WHEREAS, the prior P A was supplemented by the addition of further signatories in addition to those of the parties who were originally signatory to it on September 27, 1984; September 27, 1989; April 1, 1995; and November 1, 2005; and

WHEREAS, each of the parties hereto is a signatory to the prior P A and a “Member” of NCPA: and

WHEREAS, the parties now desire to further amend, and to restate, the prior JPA; and

WHEREAS, each of the parties to this Agreement ~~is~~ a “public agency” ~~as~~ that term is defined in Section 6500 of the Government Code ~~of~~ the State of California; and

WHEREAS, each of the parties hereto has the power ~~to~~ purchase, generate, transmit, distribute, sell and interchange electric energy in addition to other powers which are common to each of them; and

WHEREAS, pursuant to Title 1, Division 7, Chapter 5, of the Government Code ~~of~~ the State ~~of~~ California (commencing at Government Code section 6500), commonly known as the Joint Exercise of Powers Act, two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, it is the desire of the parties to use any power common to them that will make more efficient the use ~~of~~ the powers of the individual parties in the purchase, generation, transmission, distribution, sale, interchange and pooling of electrical energy

and capacity among themselves, or with each other, or with others, and any other power reasonably necessary and appropriate to aid in the accomplishment of any of these purposes; and

WHEREAS, the parties find that it would be to their mutual advantage and the public benefit to coordinate their area system planning and operation, within the extent permitted by the laws and regulations governing their respective operations and to the extent each party finds it desirable to do so, and further find that such coordination shall be understood to include the following:

- (a) Coordination of studies relating to the addition of generation or transmission facilities;
- (b) Coordination of transmission services over various facilities, including those of the United States, and of the charges for such transmission service, and the policies governing such transmission;
- (c) Coordination and maintenance of reserve generating and transmitting capacity;
- (d) Coordination in the sale of surplus capacity and energy; and

WHEREAS, the parties desire, by means of this Agreement to establish an organization and procedure for such coordination and operation and to provide for the general direction of such organization's policies, it being understood by all the parties that:

- (a) This Agreement is being executed initially by certain public agencies, but it is the intent of the parties that others may associate, and the parties signatory may re-associate themselves, later by signature to this Agreement and payment of a pro-rata share of organizational, planning and other expenditures as determined by a separate commission herein created;
- (b) All parties hereto desire that reasonable provision be made for withdrawal from such organization.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I

PURPOSES

1. It is the purpose of this Agreement to establish pursuant to the Joint Exercise of Powers Act an agency to be known as the NORTHERN CALIFORNIA POWER AGENCY for and with the purpose of acquiring and disposing of ownership and use of revenue producing facilities, including electric generating and transmitting

facilities, and making more efficient use of the common powers of individual parties composing NCPA to acquire, purchase, generate, transmit, distribute, sell, interchange, and pool electric energy and capacity, and with the further purpose to develop all other reasonably necessary or appropriate powers to provide greater individual and group efficiency through the coordination indicated in this Agreement to the extent permitted by the laws and regulations governing such operations.

ARTICLE II

ORGANIZATION – NORTHERN CALIFORNIA POWER AGENCY

1. There is hereby established pursuant to the Joint Exercise **of** Powers Act (section 6500 et seq. **of** the Government Code of the State of California) an Agency which shall be a public entity separate from the parties to this Agreement. The name **of** said agency shall be the NORTHERN CALIFORNIA POWER AGENCY. The governing body of NCPA shall be a Commission composed of one representative of each of the parties as to which this Agreement has not in any way been terminated. Such Commission shall be the administering agency of this Joint Powers Agreement, and, as such, shall be vested with the powers set forth, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein.

2. Each party to this Agreement shall be a “Member” of NCPA and appoint its designated representative to the Commission, and said representatives shall:

(a) Elect a chair, a vice-chair, and a secretary, and such other officers as the Commission shall find appropriate, to serve the Commission at its pleasure or for such term as may be provided by by-laws adopted by the Commission.

(b) Establish an Executive Committee, and such other committees **as** they shall find appropriate. The Executive Committee may exercise any power of the Commission delegated to it by by-laws adopted by the Commission.

(c) Provide general directives for the work of such committees.

(d) Take appropriate measures to meet the **financial** requirements of NCPA, by assessments and other contributions, as hereinafter provided for, and make other provisions as they shall find appropriate for the work of the Commission.

3. The Chair of NCPA shall preside at meetings of the Commission and perform such other duties as the Commission shall instruct. The duties of the Vice-Chair and the Secretary shall be the usual and customary duties of such officers.

4. The Commission shall appoint one of its officers or employees to either or both of the positions of Treasurer of NCPA and Controller of NCPA. Such offices may be held by separate officers or employees or combined and held by one officer or

employee. In any case, the Treasurer and Controller of NCPA shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Government Code.

5. The Treasurer of NCPA shall be the depository and have custody of all the money of NCPA from whatever source. The Controller of NCPA shall draw warrants or checks to pay demands against NCPA when the demands have been approved by the Commission or by the General Manager or the Assistant General Manager pursuant to a delegation of authority therefore adopted by the Commission. The Treasurer and Controller shall comply strictly with the provisions **of** the statutes relating to their duties found in Chapter 5, Division 7, Title 1 of the Government Code, beginning with Section 6500. The Controller and the Treasurer shall each file an official bond in the amount determined from time to time by the Commission.

6. The Commission shall appoint a General Manager, and may appoint one or more Assistant General Managers, to serve at the pleasure of the Commission. The General Manager shall have charge of, handle, or have access to any property of NCPA, and shall file an official bond in the amount determined from time to time by the Commission.

7. The Commission shall provide for regular meetings and special meetings in accordance with the Ralph M. Brown Act, Chapter 9, Part 1, Division 2, Title 5, of the Government Code beginning with section 54950, or in accordance with such other regulations as the legislature may hereafter provide. Each party to this Agreement shall authorize and designate one representative to vote for it at all meetings of the Commission. In addition, each party to this Agreement shall designate one or more alternates, who shall have the power to vote in the place and stead of the designated representative, in his or her absence. Public agencies which are "Associate Members" pursuant to Article IV Paragraph 7 shall not be entitled to voting representation on the Commission, but may designate one non-voting representative and one or more non-voting alternates. Associate members shall be entitled to receive notices of and to attend all regular and special meetings of the Commission in the same manner as Members.

8. (a) Each party to this Agreement, so long as this Agreement has not in any way been terminated as to such party, shall have one vote. The affirmative or negative vote of a majority of those members of the entire Commission entitled to vote shall be necessary for it to take action, except that none of the terms and conditions set forth in this Agreement, nor any of the procedures expressly provided for herein, may be altered, changed, or amended by such a vote, **or** by any means, except by written amendments to this Agreement executed by all parties hereto.

(b) Notwithstanding the provisions of Article II Paragraph 8(a) to the contrary, where agreements **for** NCPA projects *or* programs between and among NCPA and its members provide for **quorum** or voting procedures, such agreed upon procedures shall be utilized, including provisions for voting by project or program participation

percentages or voting by either associate members or non member project or program participants.

ARTICLE III

POWERS AND FUNCTIONS

1. NCPA has any and all powers authorized by law to all of the parties hereto, and separately to the agency herein created, relating to the acquisition, construction, financing, disposition, use, operation and maintenance of works for the generation and transmission of electric power and energy for use within and without the boundaries of such parties, and relating to the provision of power and energy to such area by contract with owners of such facilities, whether federal or state agencies or public utilities, including agreements to purchase power generated by others or to exchange power with others and agreements for transmission of power over its facilities and over the facilities of others and standby and pooling agreements. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. All powers common to the parties are specified as powers of NCPA. NCPA is hereby authorized to do all acts necessary for the exercise of such powers, including, but not limited to, any or all of the following: **to** make and enter into contracts; to employ agents and employees; to acquire, construct, provide for maintenance and operation of, or maintain and operate, any buildings, work or improvements; to acquire, hold or dispose of property wherever located; to incur debts, liabilities or obligations; to receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity; and to sue and be sued in its own name; and generally to do any and all things necessary **or** convenient to provide adequate supplies of firm and reliable power to its members.

Without limiting the foregoing generality, NCPA may:

- (i) acquire and dispose of all kinds of property and utilize the power of eminent domain, except that the power of eminent domain may not be exercised within the political boundaries or corporate **limits** of any party **serving** retail electric power load, nor may eminent domain be exercised with respect to any property interest owned by a party hereto, without the consent of said party, which consent shall not be unreasonably withheld;
- (ii) issue or cause to be issued bonded and other indebtedness, and pledge any property or revenues as security to the extent permitted by law either under Article 2, Chapter **5**, Division 7, Title 1 of the Government Code or otherwise including, but not limited to, bonds or other evidences of indebtedness of a non-profit corporation issued on behalf of NCPA or any of the parties to this Agreement;

(iii) obtain in its own name all necessary permits and licenses, opinions and rulings;

(iv) whenever necessary to facilitate the exercise of its powers, form and administer nonprofit corporations to do any part of what NCPA could do, or to perform any proper corporate function, and enter into agreements with such a corporation;

(v) receive assignments of power supply contracts with the Western Area Power Administration of the United States or others from the parties, or act as trustee or agent under them; real-locate power to the parties under those contracts, sell power generated or otherwise acquired by it to the parties and, to the extent permitted by law, to associate members and to others; provided that under no circumstances will **an** assigning party pay more for power, or receive an inferior supply, than if it had not assigned.

2. The manner in which NCPA shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a general law city which is a member hereof could exercise such powers and perform such duties; and shall not be subject to any restriction applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a **party** to this Agreement or not.

3. None of the debts, liabilities or obligations of NCPA shall be the debts, liabilities or obligations of any of the parties to this Agreement unless assumed in a particular case by resolution of the governing body of the party to be charged.

ARTICLE IV

MEMBERSHIP

1. Any preference purchaser or potential preference purchaser of electric service from the Western Area Power Administration of the United States, which is a "public agency," as such term is defined in Section 6500 of the Government Code of the State of California, may be a party to this Agreement.

2. (a) Any public agency which qualifies under Article IV Paragraph 1 may become a party to this Agreement by signing this Agreement and paying NCPA a pro-rata share of organization, planning and other costs and charges as determined by the Commission to be appropriate, and upon approval of all then existing parties to this Agreement. This Agreement will then become effective as of that date as to that signatory. This Agreement shall remain in effect as to any party, unless and until it is terminated as to such party by notice in writing to all other parties given by the withdrawing party at least two (2) years in advance of the effective date of such termination.

(b) Any party so terminating shall be obligated to pay its pro-rata share of all debts, liabilities and obligations of NCPA as of the date of termination **as** a condition precedent to such termination and withdrawal; provided, however, that this obligation shall not extend to debts, liabilities and obligations **of** NCPA or a nonprofit corporation created by NCPA and secured or otherwise committed pursuant to project **or** program agreements, with parties to this Agreement, but the debts, liabilities and obligations of the parties to such project or program agreements shall be determined by their terms.

3. (a) Each party hereto agrees that it will annually contribute, in proportion **to** its respective total retail electric power load (or where no retail load exists, the consumptive power load, or where no consumptive power load exists, other suitable measure as approved by the Commission) for the previous calendar year, to a fund or budget of NCPA which may cover up to one-third of legislative and regulatory activities or other NCPA general expenses not covered by other agreements **or** revenue sources, as may be approved by the Commission; and that such annual cash contribution to said fund or budget by any party may be up to fifteen cents (\$0.15) per megawatt hour (MWh) of said total retail electric power load or consumptive power load, **or** where no consumptive power load exists, other suitable measure as approved by the Commission, as submitted by such **party** to the Federal Energy Regulatory Commission or other governmental regulatory authority.

(b) In the event that NCPA contracts for or participates in the acquisition, purchase, lease or construction of generation **or** transmission facilities, or both, it is the intention of the parties hereto that all parties, agencies and others, both public and private, that utilize such facilities shall bear the total annual costs thereon on an annual fiscal year basis by entering into appropriate power supply contracts with NCPA ("Power Contracts"). Costs related to a particular planning activity **or** to a particular project which *are* incurred prior to the procurement of long-term financing ("preliminary costs"), may be borne by fewer than all the parties in any manner satisfactory to such parties, notwithstanding the provisions of Article IV Paragraph 3(a) or the provisions of any Power Contracts. Alternatively, all **or** part of any such preliminary costs may be advanced by fewer than all of the parties, upon agreement of NCPA and the party or parties advancing the costs, such advances to be repaid out of the proceeds of any subsequent long-term financing. Otherwise, such preliminary costs shall be charged to the operating costs of the NCPA.

(c) Parties participating in programs or services provided by NCPA shall provide at least **a** two (2) year written notice to NCPA of withdrawal from a given program or service. Parties newly participating in programs **or** services may be required to make an initial program or service participation commitment of longer than two (2) years, subject to Commission approval. Parties participating in programs or services pursuant to an agreement **or** other formal written arrangement approved by the Commission are subject to the therein described participation and withdrawal terms and conditions.

4. Upon the request or approval of NCPA, any party hereto may make payments, advances or contributions to NCPA from its treasury for any and all purposes set forth herein, and upon request or approval of NCPA, may contribute personnel, equipment or property, in lieu of other contributions or advances, to assist in the accomplishment of one or more of such purposes. Except as otherwise provided in accordance with Article IV Paragraph 3(b), NCPA approved advances will be treated as indebtedness of NCPA and shall be payable and repaid as such. Contributions made pursuant to Article IV Paragraph 3(a) are not advances. All such payments, advances or contributions, whether in cash or in kind, shall be made to and may be disbursed or used by NCPA.

5. Except as otherwise provided in this Agreement, there shall be no repayment or return to any party of all or any part of any payments, advances, or contributions in cash or in kind.

6. NCPA shall be held to a strict accountability of all funds and shall make an annual audit report to all parties of all receipts and disbursements, all in accordance with section 6505 of the Government Code and other applicable statutes, and with sound accounting practices.

7. If any preference purchaser or potential preference purchaser of electric service from the Western Area Power Administration of the United States is not eligible for membership herein under the terms of Article IV Paragraph 1, such purchaser may be admitted as an associate member, by separate agreement with NCPA, upon approval of the Commission. Associate members shall not be considered to be a party to this Agreement within the meaning of the Joint Exercise of Powers provisions of the Government Code, Section 6500 et seq. Associate members shall pay such portions of the costs of NCPA's operations as may be established in the membership agreement between NCPA and the associate member, including payment of charges established by Article IV Paragraph 3(a).

ARTICLE V

GENERAL PROVISIONS

1. Upon dissolution of NCPA as a legal entity, all debts of and advances to NCPA shall be paid, and then the property of NCPA, whether real or personal, shall be divided among and distributed to all of the parties who at any time during the existence of NCPA were parties to this Agreement in proportion to the costs borne by each such party to NCPA during its legal existence by non-reimbursed contributions made pursuant to Article IV Paragraph 3(a), or by payments under Power Contracts or non-reimbursed payments for preliminary costs made pursuant to Article IV Paragraph 3(b).

2. The governing Commission of NCPA is authorized to procure public liability and other insurance as it deems advisable to protect NCPA and each of the parties hereto, charging the cost thereof to the operating costs of NCPA.

3. All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them in the same degree and extent while engaged in the performance of any of their functions or duties extraterritorially under the provisions of Article 1 of Chapter 5, Division 7 of Title 1 of the Government Code of the State of California and as provided by law.

4. In the event that any party to this Agreement should at any time claim that another party has in any way breached or is breaching this Agreement, the complaining party shall file with the governing body of the other party, and with the above mentioned NORTHERN CALIFORNIA POWER AGENCY Commission, a written claim of said breach, describing the alleged breach and otherwise giving full information respecting the same. The Commission shall thereupon, at a reasonable time and place, specified by it, give all parties full opportunity to be heard on the matter, and shall, upon conclusion of said hearing, give the legislative or governing bodies of all parties a full report of its findings and recommendations. Said report, findings and recommendations shall be deemed advisory only, shall not in any way bind any of the parties hereto, and shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendations, if any party should be dissatisfied with or disagree with the same, the legislative or governing bodies of the parties in disagreement shall jointly meet with each other at a reasonable time and place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement, and no action for any legal relief because ~~of~~ any such breach or alleged breach of this Agreement, shall be filed or commenced, and nothing shall be done by any party to rescind ~~or~~ terminate this Agreement, except as provided in Article IV hereof, unless and until such party has first given to the other parties a reasonable time, after the conclusion of said joint meeting of the legislative or governing bodies that have met to resolve their differences, within which to cure any breach ~~or~~ alleged breach.

5. It is hereby declared to be the intention of the parties that the paragraphs, sentences, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or article of this Agreement shall be declared unconstitutional or invalid for any reason by the valid judgment or decree of a Court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining paragraphs, clauses, phrases, sentences and articles of this Agreement.

6. All notices required or given pursuant to this Agreement shall be deemed properly served when deposited, postage prepaid, in the United States mail, addressed to

each **party** at the address indicated on this Agreement adjacent to the signature line of each **party**.

ARTICLE VI

EFFECTIVE DATE

1. This Agreement shall become effective on the date of its execution by all of the parties and shall be effective at that time as of the date first above written.

2. Upon the effective date of this Agreement, the prior JPA, as amended, shall be of no further force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month, and year herein first above written.

CITY OF ALAMEDA

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

BAY AREA RAPID TRANSIT DISTRICT

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF BIGGS

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF GRIDLEY

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF HEALDSBURG

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF LODI

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF LOMPOC

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF PALO ALTO

Its: _____
Date: _____

APPROVED AS TO FORM:

By: _____
Its: _____

PORT OF OAKLAND

Its: _____
Date: _____

APPROVED AS TO FORM:

By: _____
Its: _____

CITY OF REDDING

Its: _____
Date: _____

APPROVED AS TO FORM:

By: _____
Its: _____

CITY OF ROSEVILLE

By: _____
Its: _____
Date: _____

APPROVED AS TO FORM:

By: _____
Its: _____

CITY OF SANTA CLARA

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Its: _____

TRUCKEE DONNER PUBLIC
UTILITY DISTRICT

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

TURLOCK IRRIGATION DISTRICT

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

CITY OF UKIAH

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____

PLUMAS-SIERRA RURAL ELECTRIC
COOPERATIVE, Associate Member

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Its: _____